

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TOMMY STRICKLAND,)	
AIS # 124708,)	
)	
Petitioner,)	
)	
vs.)	CASE #: 2:07-cv-1052-MHT
)	
WARDEN RALPH HOOKS, <i>et al.</i> ,)	
)	
Respondents.)	

ANSWER OF RESPONDENTS

Come now the Respondents, by and through the Attorney General for the State of Alabama, and, in response to this Court's December 10, 2007 Order, hereby respectfully submit this Answer to the petition for writ of habeas corpus filed by Tommy Strickland.

The Respondents deny that Strickland is entitled to any relief under the federal writ of habeas corpus.

I. PROCEDURAL BACKGROUND

A. TRIAL COURT PROCEEDINGS

Strickland's promoting prison contraband conviction – Elmore County Circuit Court (CC04-1011)

1. On March 4, 1986, Strickland pleaded guilty and was adjudicated guilty on the charge of promoting prison contraband, a violation of Ala. Code § 13A-10-37.¹ Strickland was sentenced as a habitual felony offender to fifteen years' imprisonment, split to be served ten years concurrent with an existing sentence and five years consecutive to another existing sentence. Exhibit 1. Strickland's current incarceration is the result of those convictions and sentences.

B. DIRECT APPEAL PROCEEDINGS

2. On March 12, 2003, Strickland filed a notice of appeal to the Alabama Court of Criminal Appeals challenging his promoting prison contraband conviction and sentence; however, the court dismissed his appeal as untimely and issued a certificate of judgment on March 18, 2003. See, Strickland v. State, CR-02-1119 (Ala. Crim. App. Mar. 18, 2003). Exhibit 2. Because Strickland failed to file a direct appeal, his conviction became final on April 15, 1986, following the 42-day period within which to seek appellate review. See Ala. R. App. P. 4 (b).

¹ At the time of the instant conviction, Strickland was incarcerated on a 1982 conviction for the charge of first degree robbery in Talladega County Circuit Court cases CC-82-265 and CC-82-266.

C. POST-CONVICTION PROCEEDINGS – ALA. R. CRIM. P. 32

3. On January 22, 2007, Strickland filed a petition for post-conviction relief pursuant to Ala. R. Crim. P. 32. Strickland alleged that:

- i) the trial court was without jurisdiction to render the judgment or to impose the sentence because the range of punishment exceeds the maximum allowed under Alabama law and the sentence, “in part, concurrent and in part, consecutive”, was “improperly split” and cannot statutorily be split into increments;
- ii) he was denied effective assistance of counsel because the trial counsel failed to object to the imposed sentence;
- iii) his constitutional protections against double jeopardy were violated; and,
- iv) the sentence imposed was cruel and unusual punishment “in that a 15 year sentence has been manipulated to span [of] over the course of 25 to 30 years”.

Exhibit 3, pp. 7-18.

4. On February 9, 2007, the State filed a motion to dismiss Strickland’s petition, arguing as grounds for dismissal that it was procedurally barred under Ala. R. Crim. P. 32.2 (c) and 32.2(a). Exhibit 3, pp. 19-20. On February 15, 2007, the trial court summarily dismissed Strickland’s petition. Exhibit 3, pp. 21.

5. On April 24, 2007, Strickland appealed the trial court’s denial of his petition alleging that the sentence exceeded the maximum allowed under Alabama law and as such it constituted cruel and unusual punishment. He failed to reassert his claims of ineffective assistance of counsel and double jeopardy violations,

hence those arguments were deemed abandoned for purposes of appeal. On September 21, 2007, the Alabama Court of Criminal Appeals affirmed the judgment of the trial court by an unpublished memorandum opinion in Strickland v. State, CR-06-0990 (Ala. Crim. App. Sept. 21, 2006) (mem. op.). Exhibit 4. Strickland filed an application for rehearing and brief in support which was overruled on October 12, 2007. Exhibit 5. The Alabama Supreme Court denied his petition for writ of certiorari on November 9, 2007. Exhibit 6. On November 14, 2007, the Alabama Court of Criminal Appeals issued a certificate of judgment. Exhibit 7. Strickland did not seek certiorari review in the United States Supreme Court.

D. THE INSTANT PETITION FOR HABEAS CORPUS

6. On or about November 30, 2007, Strickland filed the instant petition for habeas corpus, where he challenges his promoting prison contraband conviction.

In his petition, Strickland argues the following as grounds for relief:

- i) the violation of the state statute imposing his sentence which was ordered to be served consecutive and concurrent violated his Eighth and Fourteenth Amendment rights;
- ii) the ruling by the Alabama Court of Criminal Appeals is contrary to the plain language of the habitual felony offender statute; and,
- iii) the U.S. Constitutional violations were not addressed by any State court, and the illegal sentence was a violation of his Eighth Amendment rights. "The illegal sentence must be address (sic) and

resolved where Strickland can't be made to serve two convictions for one single crime, a Class C felony.”

Petition, p. 3-7.

II. ARGUMENT

STRICKLAND'S PETITION AND THE CLAIMS CONTAINED THEREIN ARE BARRED BY THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) ONE-YEAR LIMITATION PERIOD.²

7. Strickland's petition is barred by the limitation period set forth in the Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2244 (d) (1). The AEDPA imposes a one-year statute of limitation on all habeas corpus petitions; “[t]his rule ‘serves the well-recognized interest in the finality of state court judgments’ and ‘reduces the potential for delay on the road to finality by restricting the time that a prospective federal habeas petitioner has in which to seek federal habeas review.’ ” Drew v. Department of Correction, 297 F. 3d 1278, 1283 (11th Cir. 2002), citing Duncan v. Walker, 533 U.S. 167, 179, 121 S. Ct. 2120, 2128, 150 L. Ed. 2d 251 (2001). Title 28 U.S.C. § 2244 (d) (1) (A) provides that the limitation period begins to run on the date that the time for seeking direct

² Respondents will only address the one-year statute of limitation violation presented by Strickland's petition for writ of habeas corpus. Respondents **do not** waive their procedural default claims and reserve the right to raise any procedural default claims should this Court conclude Strickland's federal habeas corpus petition is not barred by the one-year statute of limitation.

review of the challenged judgment expires. The limitation period is subject to statutory tolling only under limited circumstances, such as when a properly filed state court postconviction petition is pending for review. Goodman v. United States, 151 F. 3d 1335, 1337 (11th Cir. 1998); 28 U.S.C. § 2254 (d) (2).

8. Strickland failed to file a timely appeal of his March 4, 1986 guilty plea conviction on the charge of promoting prison contraband. His conviction then “became final by the conclusion of direct review or the expiration of the time for seeking such review” on April 15, 1986, the day upon which he could have filed notice of appeal pursuant to Ala. R. App. P. 4 (b) (1). 28 U.S.C. § 2244 (d) (1) (A); Brown v. Hooks, 2006 WL 1004865 at *4 (11th Cir. Apr. 18, 2006) (slip copy); Bridges v. Johnson, 284 F. 3d 1201, 1202 (11th Cir. 2002) (for purposes of determining the AEDPA one-year limitation period, the defendant’s convictions became final on the date that his right to appeal expired, where he did not seek a direct appeal from the convictions).

9. Strickland’s conviction became final on April 15, 1986, before the enactment of the AEDPA. Strickland also had an opportunity to challenge his conviction and sentence, despite the age of his conviction, until April 24, 1997. “This Court concluded that prisoners whose convictions became final before the enactment of the AEDPA had to be given a ‘reasonable time’ to file their habeas petitions. Wilcox v. Florida Dep’t of Corrections, 158 F.3d 1209, 1211 (11th

Cir.1998)... That reasonable period was determined to be until April 23, 1997 -- one year after the enactment of the AEDPA. See *id.*; see also Goodman v. United States, 151 F.3d 1335, 1337 (11th Cir.1998) (28 U.S.C. § 2255). ” Moore v. Campbell, 344 F. 3d 1313, 1319-1320 (11th Cir. 2003) .

10. Strickland runs afoul of the equitable application of the statute of limitation that allowed federal petitioners, attacking their convictions, a one-year moratorium from the AEDPA’s effective date to file a federal habeas corpus petition. See Calderon v. U.S. Dist. Court for Central Dist. Of Cal., 112 F. 3d 386, 388 (9th Cir. 1997)(one-year time limit does not begin to run against any state prisoner prior to the statute’s date of enactment.). Under the equitable application, Strickland had until April 24, 1997, to file his federal habeas petition. Strickland’s habeas petition was filed, at the earliest, on November 30, 2007. Strickland did not take advantage of the moratorium, and his petition is filed well past the expiration of the one-year statute of limitation.

11. Strickland has shown no grounds under which he would be entitled to equitable tolling, “an extraordinary remedy which is typically applied sparingly [.]” to excuse his failure to file within the statutory period. Steed v. Head, 219 F. 3d 1298, 1300 (11th Cir. 2000); Howell v. Crosby, 415 F. 3d 1250, 1251 (11th Cir. 2005). Strickland’s petition is therefore barred as filed outside the AEDPA

limitation period under Title 28 U.S.C. Section 2244 (d) (1), and is due to be dismissed for this reason.

CONCLUSION

Based upon the foregoing authorities and facts, Strickland's petition for writ of federal habeas corpus should be dismissed with prejudice.

Respectfully submitted,

Troy King (KIN047)
Attorney General
By:

/s/Madeline Hinson Lewis
Madeline Hinson Lewis (HIN032)
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11 South Union
Montgomery, AL 36130-0152
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Fax: (334) 242-2848
E-Mail: mlewis@AGO.State.AL.US

EXHIBITS

- Exhibit 1: State v. Strickland, Elmore County Circuit Court, CC-86-140.00
- Exhibit 2: Certificate of Judgment, Strickland v. State, CR-02-1119
(Ala. Crim. App. Mar. 18, 2003)
- Exhibit 3: Case Action Summary (CC-86-140.60), Alabama Court of Criminal Appeals CR-06-0990
- Exhibit 4: Alabama Court of Criminal Appeals' September 21, 2007 unpublished memorandum opinion, Strickland v. State, CR-06-0990
(Ala. Crim. App. Sept. 21, 2007) (mem. op.)
- Exhibit 5: Notice Application for Hearing Overruled, Strickland v. State, CR-06-0990
- Exhibit 6: Alabama Supreme Court's denial of Strickland's petition for writ of certiorari, Ex parte Strickland, No. 1070107(Ala. Nov. 9, 2007)
- Exhibit 7: Certificate of Judgment, Strickland v. State, CR-06-0990
(Ala. Crim. App. Nov. 14, 2007)

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document (including all exhibits) to the following non-CM/ECF participants: Tommy Strickland, AIS #124708, Red Eagle Honor Farm, 1290 Red Eagle Road, Montgomery, AL 36110.

/s/ Madeline Hinson Lewis
Madeline Hinson Lewis (HIN032)
Office of the Attorney General
Alabama State House
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ADDRESS OF COUNSEL:

Office of the Attorney General
Criminal Appeals Division
11 South Union Street
Montgomery, Alabama 36130-0152
(334) 242-7300

360416/116116-001

Print

County: 29 - ELMORE

Case Number: 29-CC-1986-000140.00

NOTICE

Name: STRICKLAND TOMMY

Charge: PROMOT PRISON CONTRA

Case

See Case Detail Record from Alacourt.com version 1.

Case Information

County:	29 ELMORE	Case N°:	CC-1986-000140.00	JID:	SGR SIBLEY G. REYNOLDS	DEF status:	P Prison
Filed:	02/05/1986	AAGCY:	C County	Muni N°:		City:	
Arrest date:	01/27/1986	Offe date:		ORI:	0290000	Officer:	
Indict date:	01/18/1986	Grand jury:	37	Atty 1:		Ticket N°:	
Tracking N°s:	0/0/0						
Date:		Que:		Time:		Desc:	

Defendant Information

Name:	STRICKLAND TOMMY	Alias 1:		Alias 2:	
DOB:	09/24/1959	SSN:	422-90-5629	Driv License N°:	AL
Height :	5'10"	Weight:	178	Race/Sex:	White /M
SID:	ALO	YDate:		AIS:	124708
Address 1:	AIS # 124708			Address 2:	P O BOX 150
Zip:	36057	City:	MT MEIGS	State:	AL
				Country:	US

Prosecutor and Attorney Info

Prosecutor:	JOR027	Name:	JORDAN JENNIFER RENEE	Prosecutor Flag:	N
Attorney 1:		Name:		Attorney 1 Flag:	Y
Attorney 2:		Name:		Attorney 2 Flag:	Y

Warrant Information

Warrant Date:		WARACT:		WARLOC:	
Warrant Date Code:	-	WARACT Code:	-	WARLOC Code:	-
BP ISS:		BP RTN:			

Charges

1. Crime co:	PPC2	Statute:	PROMOT PRISON CONTRABAN 2	Stat Name:	13A-010-037	Class/Categ:	F GP	Counts:	1
2. Crime co:		Statute:		Stat Name:		Class/Categ:		Counts:	
3. Crime co:		Statute:		Stat Name:		Class/Categ:		Counts:	
More:	N	Dom Viol:		Case Type:	F	Case Categ:	GP		
Comment:									

Bonding Information

Bond amt:	0.00	Bond type:		Bond co:	
Rel date:		Sure:		CWIT:	
Jury Demand:				Appeal Type	

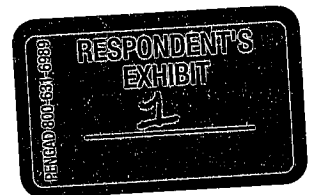
Settings

Disposition

Sentence

Sentence TC 29CC198600014000

Sent:	03/04/1986	Begin:	03/04/1986	End:	0	PRB Beg:	
IMP CONF:	15 00 000	SUSP CONF:	00 00 000	Total Conf:	15 00 000	Jail Cred:	00 00 000



LICN Susp: 00 00 000

Probation: 00 00 000

PRB Rev:

Monetary

Cost:	Fine Imp: 0.00	Fine Susp: 0.00	CVCC:	HIS:
WCCS:	MCOS:	JFEE: 0.00	DRGF: # 0	ASUS:
PREL:	DRUG:	RCUP: 0.00	SUBP:	
RES1: 0.00		RES2: 0.00		RES3: 0.00
RES4: 0.00		RES5: 0.00		RES6: 0.00

Confine

PENT: X	LIFE:	LWOP:	DEATH:	SPLIT:	BOOT: DAYS:0	EMON: DAYS:0
JAIL:	CCUR: X	CSEC: X	CTERM:	RVSPL:	GANG: DAYS:0	

Programs

JDVR:	IPROB:	AASCH:	DUI:	DDC:	CSV: HOURS: 0	SAPP:
PTRL:	BCSCH:	MNTL:	CRO:	ASCH:	ANGER:	DRUGCT:

Enhanced

PROJ:	CNOT:	SCH:	VDOB:	HOOF:
DRUGCODE:	MEAS:	VOL: 0.00		

SEC/CUR: X X

Comment:

Bal Due:

Due:

CRO:

Updated:

Cost: 03/13/2003

Enforcement**Consolidated Case Action Summary****Consolidated Case Action Summary** TC 29CC198600014000

Date	Time	Code	Comments
03/13/2003	15:47:20	JUDG	ASSIGNED TO: (SGR) SIBLEY G. REYNOLDS (AR01)
03/13/2003	15:47:21	STAT	INITIAL STATUS SET TO: "P" - PRISON (AR01)
03/13/2003	15:47:22	ARRS	DEFENDANT ARRESTED ON: 01/27/1986 (AR01)
03/13/2003	15:47:23	FILE	FILED ON: 02/05/1986 (AR01)
03/13/2003	15:47:24	FILE	CHARGE 01: PROMOT PRISON CONTRA/#CNTS: 001 (AR01)
03/13/2003	15:47:25	INDT	DEFENDANT INDICTED ON: 01/18/1986 (AR01)
03/13/2003	15:48:20	DJID	DISPOSITION JUDGE ID CHANGED FROM: TO: SGR
03/13/2003	15:48:21	DISP	CHARGE 01: PROMOT PRISON CONTR/#CNTS: 001 (AR10)
03/13/2003	15:48:22	DISP	CHARGE 01 DISPOSED BY: GUILTY PLEA ON: 03/04/1986
03/13/2003	15:49:58	INTR	INDTRL TYPE CHANGED FROM: (AR11)
03/13/2003	15:49:59	ATYW	ATYW TYPE CHANGED FROM: (AR11)
03/13/2003	15:50:00	IRA0	IRA TYPE CHANGED FROM: (AR11)
03/13/2003	15:50:00	PROS	PROSECUTOR CHANGED FROM: (AR11)
03/13/2003	15:52:18	APDT	APPEAL DATE CHANGED FROM: 00/00/0000 (AR11)
03/13/2003	15:52:19	APTY	APPEAL TYPE CHANGED FROM: (AR11)

03/13/2003 16:00:07 CH01 DEFENDANT SENTENCED ON: 03/04/1986 (AR05)
03/13/2003 16:00:08 CH01 CONSECUTIVE SENTENCE ORDERED BY THE COURT (AR05)
03/13/2003 16:00:09 CH01 5 YR TO RUN CONSECUTIVE AND 10 YRS TO RUN CC(AR05)
03/13/2003 16:00:10 CH01 SENTENCE TO BEGIN ON: 03/04/1986 (AR05)
03/13/2003 16:00:11 CH01 TOTAL CONFINEMENT: 15 YEARS (AR05)
03/13/2003 16:00:12 CH01 PENITENTIARY PROVISION ORDERED BY THE COURT (AR05)
03/13/2003 16:00:13 CH01 IMPOSED CONFINEMENT: 15 YEARS (AR05)
03/13/2003 16:00:14 CH01 CONCURRENT SENTENCE ORDERED BY THE COURT (AR05)
03/24/2003 09:11:23 ATY1 ATTY 1 CHANGED FROM: (AR11)
03/24/2003 14:25:48 DISP BY: D - DISMISSED ON: 03/21/2003 (AR11)

Images 29-CC-1986-000140.00

Witness List

Financial

Motions

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
JUDICIAL BUILDING, 300 DEXTER AVENUE
P.O. BOX 301555
MONTGOMERY, AL 36130-1555

H. W. "Bucky" McMILLAN
Presiding Judge
SUE BELL COBB
PAMELA W. BASCHAB
GREG SHAW
A. KELLI WISE
Judges

Lane W. Mann
Clerk
Wanda K. Ivey
Assistant Clerk
(334) 242-4590
FAX (334) 242-4689

52079

CERTIFICATE OF JUDGMENT

CR-02-1119

Tommy Strickland v. State of Alabama (Appeal from Elmore Circuit Court: CC86-140).

To the Clerk of the above noted Trial Court, Greetings:

Whereas, the above referenced appeal has been duly examined and considered by the Court of Criminal Appeals; and

Whereas, the Court, having considered the same, has now ordered that said appeal be dismissed as untimely filed;

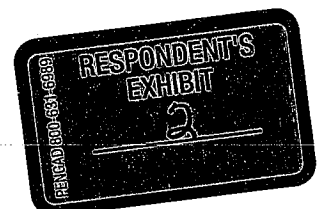
Now, therefore, it is hereby certified that a judgment of dismissal was entered in said appeal on this the 18th day of March, 2003.

Done this the 18th day of March, 2003.


H.W. "Bucky" McMILLAN, PRESIDING JUDGE

CCA/jz

cc: Honorable Sibley G. Reynolds, Circuit Judge
Honorable Larry Dozier, Circuit Clerk
Tommy Strickland, Pro Se, Appellant
Office of Attorney General ✓



COURT OF CRIMINAL APPEALS NO. CL-06-0990

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF ELMORE COUNTY, ALABAMACIRCUIT COURT NO. CC 1986-140.60CIRCUIT JUDGE HON. SIBLEY G. REYNOLDSType of Conviction / Order Appealed From: RULE 32Sentence Imposed: CASE DISMISSEDDefendant Indigent: ☒ YES ☐ NOTOMMY STRICKLANDPRO SE

(Appellant's Attorney)

1290 RED EAGLE ROAD B1-32A

(Address)

MONTGOMERY, ALABAMA 36110

(City)

(State)

(Zip Code)

V.

NAME OF APPELLANT

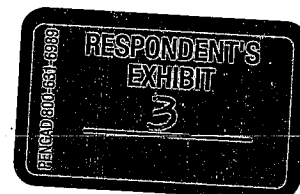
STATE OF ALABAMA

(State represented by Attorney General)

NAME OF APPELLEE

NOTE: If municipal appeal, indicate above, and enter
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



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APPEAL TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

AT A REGULAR, ADJOURNED OR SPECIAL SESSION OF THE CIRCUIT COURT OF ELMORE COUNTY, ALABAMA, CRIMINAL DIVISION, AT WHICH TIME THE OFFICERS AUTHORIZED BY LAW TO SERVE WERE SERVING, THE FOLLOWING PROCEEDINGS WERE HAD IN THE CASE STYLES:

TOMMY STRICKLAND
APPELLANT:

IN THE CIRCUIT COURT OF
ELMORE COUNTY ALABAMA
CASE NO: CC1986-140.60

VS

STATE OF ALABAMA
APPELLEE:

APPEARANCES

FOR THE APPELLANT:

TOMMY STRICKLAND
AIS#124708
1290 RED EAGLE ROAD
B1-32A
MONTGOMERY, AL 36110

FOR THE APPELLEE:

HON. BILL PRYOR
ATTORNEY GENERAL
11 SOUTH UNION STREET
MONTGOMERY, AL 36130

CIRCUIT JUDGE:

HON. SIBLEY G. REYNOLDS
P. O. BOX 70
CLANTON, AL 35045

COURT REPORTER:

N/A

AC 372 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 1986 000140.60
 ST SUS CASE ACTION SUMMARY
 1 CIRCUIT CRIMINAL RUN DATE: 01/25/2007
 IN THE CIRCUIT COURT OF ELMORE JUDGE: SGR

STATE OF ALABAMA VS STRICKLAND TOMMY
 CASE: CC 1986 000140.60 AIS # 124708
 P O BOX 150
 MT MEIGS, AL 36057 0000

DOB: 09/24/1959 SEX: M RACE: W HT: 5 10 WT: 178 HR: BRO EYES: GRN
 SSN: 422905629 ALIAS NAMES:

CHARGE01: RULE 32-FELONY CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001
 OFFENSE DATE: AGENCY/OFFICER: 0290000

DATE WAR/CAP ISS: DATE ARRESTED: 01/27/1986
 DATE INDICTED: DATE FILED: 01/22/2007
 DATE RELEASED: DATE HEARING:
 BOND AMOUNT: \$.00 SURETIES:

DATE 1: DESC: TIME: 0000
 DATE 2: DESC: TIME: 0000

TRACKING NOS: / /

DEF/ATY:

TYPE:

TYPE:

00000

00000

PROSECUTOR: GRIFFIN TRACY LOWE

OTH_CSE: 00000000000000000000 CHK/TICKET NO: GRAND JURY:
 COURT REPORTER: SID NO: 0000000000
 OF STATUS: PRISON DEMAND: OPER: SUS

ACTIONS, JUDGEMENTS, AND NOTES

1/22/07	In forma Pauperis Declaration
1/22/07	Order
1/22/07	Petition for relief from Conviction or Sentence c. to DA
2/9/07	Motion to Dismiss
2-15-07	Case dismissed &
2-15-07	Order c. DA & Dept (Dismissed)
3/7/07	Motion for reconsideration of Rule 32 Petition
3/7/07	Notice of Appeal
3/7/07	Court Reporter's transcript of DA, AG, CCA, A. Skarman
3/7/07	Docketing Statement c. DA, AG, CCA, A. Skarman
3-24-07	Motion to Reconsider - denied & c. Dept

CC 1286 000140 (R)
ID YR NUMBER(To be completed
by Court Clerk)

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

TOMMY STRICKLAND
(Petitioner)

vs.

STATE OF ALABAMA
(Respondent(s))

JAN 22 2007

granted
(SN)

1-22-07

DECLARATION IN SUPPORT OF REQUEST TO PROCEED
IN FORMA PAUPERIS

I, TOMMY STRICKLAND, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes _____ No X

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

N/A

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes _____ No X

b. Rent payments, interest, or dividends?

Yes _____ No X

c. Pensions, annuities, or life insurance payments?

Yes _____ No X

d. Gifts or inheritances?

Yes X No _____

e. Any other sources?

Yes X No _____

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

I RECEIVE MONEY FROM MY FAMILY FROM TIME TO TIME TO HELP
SUBSIDIZE MY NEEDS. I WORK FOR "A.C.I" AND GET A SMALL AMOUNT
OF COMPENSATION.

3. Do you own cash, or do you have money in a checking or savings account?

Yes X No _____

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes _____ No X

If the answer is "yes", describe the property and state its approximate value.

N/A

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

N/A

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 1-06-07
 (Date)

Tommy Stith
 Signature of Petitioner

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ _____ on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said _____ institution:

DATE

AUTHORIZED OFFICER OF INSTITUTION

PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on 1st January 2007
(Date)

+ Tommy Strekland
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 1st day of January 2007

Donnie E. Brown
Notary Public

OR *

ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on _____
(Date)

Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the _____ day of _____

Notary Public

Name and address of attorney representing petitioner
in this proceeding (if any)

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
RED EAGLE HONOR FARM

AIS #: 124708 NAME: STRICKLAND, TOMMY AS OF: 01/11/2007

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSITS
JAN	20	\$0.00	\$0.00
FEB	28	\$0.00	\$0.00
MAR	31	\$0.00	\$0.00
APR	30	\$0.00	\$0.00
MAY	31	\$0.00	\$0.00
JUN	30	\$0.00	\$0.00
JUL	31	\$0.00	\$0.00
AUG	31	\$0.00	\$0.00
SEP	30	\$0.07	\$0.11
OCT	31	\$18.30	\$198.70
NOV	30	\$1.92	\$0.00
DEC	31	\$40.14	\$239.53
JAN	11	\$61.05	\$0.00

PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32,
Alabama Rules of Criminal Procedure)

Case Number

CC ID 286 YR 000140 NUMBER

IN THE CIRCUIT COURT OF ELMORE, ALABAMA

TOMMY STRICKLAND vs. STATE OF ALABAMA
Petitioner (Full Name) Respondent

JAN 22 2007

[Indicate either the "State" or,
if filed in municipal court, the
name of the "Municipality"]

Prison Number 124708 Place of Confinement RED EAGLE HONOR FARM

County of conviction ELMORE

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY
THE ACCOMPANYING INSTRUCTIONS.

- Name and location (city and county) of court which entered the judgment of conviction or sentence under attack WETHUKA, ELMORE COUNTY ALABAMA
- Date of judgment of conviction 4TH DAY OF MARCH 1986
- Length of sentence (15) FIFTY YEARS
- Nature of offense involved (all counts) PROMOTING PRISON CONTRABAND II
- What was your plea? (Check one)
 - Guilty X
 - Not guilty _____
 - Not guilty by reason of mental disease or defect _____
 - Not guilty and not guilty by reason of mental disease or defect _____

(a) Jury _____

(b) Judge only X

7. Did you testify at the trial?

Yes _____

No X

8. Did you appeal from the judgment of conviction?

Yes _____

No X

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court N/A

(2) Result N/A

(3) Date of result N/A

Yes ☒No ☐

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

- (a) (1) Name of court ELMORE COUNTY
- (2) Nature of proceeding MOTION FOR SENTENCES CONSOLIDATION
- (3) Grounds raised _____

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No ☒

- (5) Result DENIED

- (6) Date of result 5/6/2000 / 10/9/02 - 1-31-03 - ~~3-4-03~~

- (b) As to any second petition, application, or motion, give the same information:

- (1) Name of court ELMORE COUNTY
- (2) Nature of proceeding MOTION TO TAKE AWAY CONSECUTIVE STATUS OF SENTENCES
- (3) Grounds raised _____

(attach additional sheets if necessary)

- (4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____

No ☒

- (5) Result DENIED

- (6) Date of result 3-4-03

- (c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

- (1) Name of court _____

(3) Grounds raised

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No X

(5) Result

(6) Date of result

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes _____ No X

(2) Second petition, etc. Yes _____ No X

(2) Third petition, etc. Yes X No _____

ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

ON LAST MOTION I DID APPEAL, IN ALL CASES, I WAS NOT CERTAIN OF
PROPER ADEQUATE TO PROSECUTE.

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

GROUND S OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

X A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:.

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

X B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

X C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

_____ D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

_____ E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

- A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes _____

No X _____

- B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court N/A _____

(b) Result N/A _____

(c) Date of result N/A _____
(attach additional sheets if necessary)

- C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes _____

No X _____

- (a) At preliminary hearing ~~UNKNOWN~~ JOHN COTTLE
- (b) At arraignment and plea JOHN COTTLE
- (c) At trial N/A
- (d) At sentencing JOHN COTTLE
- (e) On appeal LIZ HUNTLEY
- (f) In any post-conviction proceeding LIZ HUNTLEY
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes _____ No X

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes _____ No X

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes _____ No X

18. What date is this petition being mailed?

JANUARY 4TH 2007

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

RELIEF SOUGHT.

COMES NOW THE PETITIONER, TOMMY STRICKLAND, AND RESPECTFULLY ASK THE HONORABLE COURT, AFTER REVIEWING THE FACTS OF THE ABOVE NAMED CASE, TO ON MOTION OF IT'S OWN AUTHORITY OR MOTION BY PETITIONER TO A.) VACATE THE SENTENCE OF 15 YEARS IN THE ABOVE NAMED CASE OR; B.) TO VACATE "IN PART" THE SENTENCE, TO A "LAWFULLY AND PROPER" SENTENCE. OR, C.) AMEND THE SENTENCE, INSPETIC, THE 15 YEAR TERM EXPOSED ON 4TH DAY OF MARCH, 1986 BE TERMINATED ON SUCH DATE AS IS 15 YEARS TERM, CONTINUOUS. (APPX DATE OF TERMINATION IS MARCH 4, 2001) D.) BARRING ANY OF THOSE OPTIONS, THE PETITIONER WOULD ASK THAT THE HONORABLE COURT AMEND THE SENTENCE TO THE 10YRS AS IS ALLOWED BY LAW FOR A CLASS "C" FELONY AND THEREBY TERMINATING THE SENTENCE ALTOGETHER.

UPON SUCH ACTION, THE PETITIONER ASK THAT A COPY OF THE ORDER BE SENT TO THE ALABAMA DEPT. OF CORRECTIONS, CLASSIFICATION DEPT TO REFLECT THE LAWFUL AMENDED SENTENCE.

THE COURT WAS WITHOUT JURISDICTION TO IMPOSE THE SENTENCE

CLAIM I.

THERE IS NO PROVISION WITHIN THE CODE OF ALABAMA 1975, NOR IN THE ALABAMA RULES OF COURT THAT WOULD ALLOW FOR A SENTENCE OF (15) FIFTEEN YEARS TO BE "SPLIT" INTO INCREMENTS, OR FOR A SENTENCE TO BE "IN PART" TO RUN CONCURRENT AND "IN PART" TO RUN CONSECUTIVE. UNDER TITLE 15-18-8, CODE OF ALABAMA (SPLIT SENTENCE ACT) IT PLAIDLY STATES, "THE MAXIMUM AMOUNT* A SENTENCE OF (15) FIFTEEN YEARS CAN BE "SPLIT" IS (3) YEARS, EVEN SO, THIS TITLE WOULD NOT APPLY IN THE INSTANT CASE. THE DEFENDANT, MERELY QUOTES THIS TITLE TO GIVE AN EXAMPLE THAT ALABAMA LAW IN NO WAY SUPPORTS SUCH A SENTENCE. AT BEST, THE PRESENT SENTENCE WOULD EXCEED THE MAXIMUM ALLOWED BY LAW, AT WORST, THE SENTENCE IS GROSSLY ILLEGAL / IMPROPER. THUS, THE TRIAL COURT EXCEEDED ITS AUTHORITY IN IMPOSING SUCH A SENTENCE.

CLAIM II.

UNDER RULE 1907-6519 ALABAMA RULES OF COURT, ONCE A SENTENCE HAS BEGUN IT CANNOT BE HALTED, DELAYED OR OTHERWISE STOPPED, UNLESS, THE DEFENDANT HAS IN SOME WAY CAUSED A "DELIQUENT" PERIOD IN SAID SENTENCE. I.E. REVOCATION OF PROBATION OR PAROLE, CLEARLY THIS IS NOT THE CASE IN THE PRESENT MATTER AS THE DEFENDANT HAS NOT RECEIVED PROBATION NOR PAROLE ON THIS CASE, AND IN NO OTHER WAY HAS THE DEFENDANT "CAUSED A DELAY OF SENTENCE."

(KING - EX PARTE 16 ALA. APP. 118)

THE SENTENCE IMPOSED EXCEEDS THE MAXIMUM AUTHORIZED BY LAW, OR IS OTHERWISE NOT AUTHORIZED BY LAW:

CLAIM I:

A (15) YEAR SENTENCE, IS BY DEFINITION AND BY LAW, JUST WHAT IT SAYS. (15) YEARS... FROM THE DAY OF SENTENCING, THE DURATION OF THE SENTENCE IS NOT TO EXCEED THE TERM IMPOSED. IN THE INSTANT CASE, THE TERM OF SENTENCE IMPOSED IS (15) YEARS TO BEGIN ON THE ~~3RD~~^{4TH} DAY OF MARCH, 1986. BASED ON THIS DATE, THE SENTENCE SHOULD "TERMINATE" THE 4TH DAY OF MARCH, 2001. BY VIRTUE OF "LONG DATE", IN THIS INSTANT CASE, THE "TERMINATION DATE" FAR EXCEEDS THE (15) YEAR TERM, BY AT LEAST 10 YEARS, DUE TO THE FACT THE SENTENCE IS WITH "GOOD TIME." THEREFORE THE SENTENCE IS ILLEGAL / IMPROPER AND CAN BE CHALLENGED AT ANY TIME. (ROGERS V. STATE 728 SO 2D 690, BRADNOLL V. STATE 547 SO 2D 68, HUNT V. STATE 659 SO 2D 998) IN RESPECT TO THE "CONTINUOUS SENTENCE, THE CONST. OF ALA, UNDER 1901 - 6519 STIPULATES A SENTENCE MUST BE CONTINUOUS. (EX PARTE KING 16 ALA. APP. 118)

CLAIM II:

THE SENTENCE IMPOSED EXCEEDS THE RANGE OF PUNISHMENT FOR A "CLASS" FELONY. RANGE OF PUNISHMENT IS 1-10 YEARS, THE DEFENDANT RECEIVED 15 YEARS. ALTHOUGH, THE STATE DID "SHOW INTENT" TO ENFORCE THE H.O.F.A. 13A-5-9, THEY NEVER ACTUALLY PROVED OR ATTEMPTED TO PROVE ANY PRIOR FELONIES. THEREFORE, THE SENTENCE SHOULD NOT BE ENHANCED, THE MAXIMUM ALLOWED PUNISHMENT IS 10 YEARS. (RULE 26 (B) (3) (iii) ALA RULES OF COURT 1) (HORN V. STATE 912 SO 2D 539)

CLEARLY, THIS SENTENCE IS UNAUTHORIZED BY LAW, AND EXCEEDS THE MAXIMUM AUTHORIZED BY LAW. THEREFORE, THE DEFENDANT RESPECTFULLY PRAYS THE HONORABLE TAKE CORRECTIVE MEASURES AND VACATE SAID SENTENCE, AT LEAST IN PART.

THE CONSTITUTION OF THE UNITED STATES OR THE STATE OF ALABAMA
REQUIRES A NEW SENTENCE PROCEEDING OR OTHER RELIEF

CLAIM I. INEFFECTIVE ASSISTANCE OF COUNSEL:

COUNSEL THAT WAS APPOINTED IN THIS MATTER WAS INEFFECTIVE IN
THE FACT THAT A.) HE ALLOWED THE STATE OF ALABAMA AND THE TRIAL COURT
TO IMPOSE AN ILLEGAL / IMPROPER SENTENCE WITHOUT OBJECTING IN
THE DEFENDANTS FAVOR / BEHALF, I.E. THE SENTENCE IMPOSED IS NOT
AUTHORIZED BY THE RULES OF COURT (RULE 26) ALABAMA RULES OF COURT.
B.) APPOINTED COUNSEL FAILED TO ADVISE OR NOTIFY THE DEFENDANT THAT
THE SENTENCE BEING IMPOSED WAS / IS IN FACT ILLEGAL / IMPROPER AND
IS OTHERWISE NOT AUTHORIZED BY LAW.

CLAIM II. DOUBLE JEOPARDY

THE DEFENDANT MAKES THE CLAIM OF "DOUBLE JEOPARDY" WHICH IS A DIRECT
VIOLATION OF THE 5TH AMENDMENT TO THE CONSTITUTION OF THE UNITED
STATES. IN PART IT STATES: "NO PERSON SHALL BE TWICE HELD IN JEOPARDY
OR OTHERWISE TWICE PUNISHED FOR THE SAME OFFENSE". IT IS CLEAR THAT
THE DEFENDANT IS BEING "TWICE PUNISHED" ON THE SAME OFFENSE. TO WIT,
A SENTENCE THAT HAS BEEN IMPOSED (15) FIFTEEN YEARS WAS IMPROPERLY
"SPLIT", 10 YRS TO BE RUN CONCURRENT, THEN A (10) TEN YEAR DELAY AND THE
REMAINING (5) FIVE YEARS TO RUN CONSECUTIVE, THE SAME, CASE NUMBER,
SAME OFFENSE LISTED AS TWO SEPERATE SENTENCES, WHICH CLEARLY IS A
BLANTANT CASE OF DOUBLE JEOPARDY. AS IT IS THE PETITIONER IS SERVING
(2) TWO SENTENCES FOR (1) OFFENSE, SEE EXHIBIT "A"

CLAIM III CRUEL AND UNUSUAL PUNISHMENT - 8TH AMENDMENT, U.S. CONST.

DEFENDANT CLAIMS THAT THE SENTENCE IMPOSED IS CRUEL AND UNUSUAL
IN THAT, A (15) YEAR SENTENCE HAS BEEN MANIPULATED TO SPAN OF OVER
THE COURSE OF (25) TWENTY-FIVE TO (30) YEARS.

TOMMY STRICKLAND

v.

STATE OF ALABAMA

EXPLANATION FOR GROUNDS FOR RELIEF

IN THIS RULE 32 PETITION, I TOMMY STRICKLAND, PETITIONER MAKE SEVERAL CLAIMS, THUS I WILL EXPLAIN EACH CLAIM BRIEFLY.

CLAIM I. INEFFECTIVE ASSISTANCE OF COUNSEL - APPOINTED COUNSEL WAS INEFFECTIVE IN THAT HE NEVER ADVISED ME THAT THE PLEA AGREEMENT I WAS TO ENTER INTO WAS NOT PROPER, LEGAL OR OTHERWISE IN MY BEST INTERESTS. THE FACT IS, APPOINTED COUNSEL, NEVER EVEN SPOKE TO ME.

CLAIM II. ILLEGAL / IMPROPER SENTENCE - THE SENTENCE IMPOSED (15) YEARS IS NOT LEGAL IN THE FACT IT IS EQUIVARIANT TO A "SPLIT" IN WHICH THERE ARE NO PROVISIONS IN ALABAMA CRIMINAL CODE 1975 THAT WILL PROVIDE FOR SUCH A SENTENCE. FURTHERMORE, THE SENTENCE WAS IMPOSED ON MARCH 4, 1986, BY LAW, ONCE THE SENTENCE HAS BEEN IMPOSED IT MUST CONTINUE UNTILL THE END OF SENTENCE, AS A MATTER OF LAW THE SENTENCE CANNOT BE "STOPPED" TO RESUME AT A LATER DATE. IN EFFECT, THE PETITIONER IS SERVING (2) TWO SENTENCES FOR THE SAME OFFENSE. SEE EXHIBIT "A".

CLAIM III THE SENTENCE EXCEEDS THE MAXIMUM ALLOWED BY LAW. - THE PETITIONER, PLEAD GUILTY TO A CLASS "C" FELONY, THE MAXIMUM PENALTY ALLOWED BY LAW IS 10 YEARS. THE DEFENDANT RECEIVED A TERM OF (15) YEARS. ALTHOUGH THE STATE SHOWED "INTENT" TO INVOLVE THE H.O.F.A. (13A-5-9) CODE OF ALABAMA 1975, IT FAILED TO PROVE IN THE PROPER MANNER UNDER RULE 26 (B) (3) (iii), IN WHICH THE RULES ARE CLEAR AND SPECIFIC AS TO WHAT MUST BE DONE. THE STATE FAILED TO DO SO.

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT
ELMORE COUNTY, ALABAMA

TOMMY STRICKLAND

PETITIONER,

vs.

STATE OF ALABAMA

RESPONDANT.

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CASE NO.: CC-1986-140.60

FEB - 9 2007

MOTION TO DISMISS

COMES NOW the State of Alabama, by and through the Office of the District Attorney for the Nineteenth Judicial Circuit, and moves this Honorable Court to dismiss the above styled Rule 32 ARCrP Petition, and as grounds therefore submits to the Court the following:

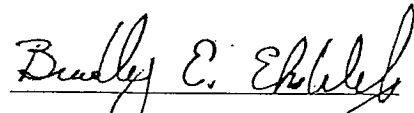
1. Petitioner filed motions for sentence consolidation on May 3rd 2000, October 4th, 2002, January 29th, 2003, and February 26th, 2003. All motions were denied. He filed a notice of appeal with the Court of Criminal Appeals on March 13th, 2003. The Court of Criminal Appeals entered a certificate of judgment on March 21st, 2003 stating the appeal was to be dismissed as untimely filed.
2. Petitioner filed this Rule 32 Petition on January 23rd 2007. He avers ineffective assistance of counsel, that the Court lacked jurisdiction to render judgment or impose sentence, and that the sentence imposed exceeded the maximum as allowed by law. Specifically he states that there is no provision in the law for his sentence to be split into increments i.e. in part to run concurrent and in part to run consecutive. He argues that under Code of Alabama 1975 §15-18-8 that the maximum amount a sentence of fifteen (15) years can be split is three (3) years.
3. *Code of Alabama 1975 §15-18-8* deals with split sentences. Petitioner's sentences were not split but rather were in part consecutive and in part concurrent, therefore this code section is not applicable and his argument is without merit.
4. Petitioner next argues ineffective assistance of counsel in that his counsel allowed the trial court to impose an illegal/improper sentence. Rule 32.2c ARCrP requires ineffective assistance of counsel issues be filed within two (2) years after the time for filing an appeal lapses or the certificate of final judgment is entered. *Mosley v. State*, 616 So2d. 362, Ala Crim. App. (1993). Petitioner's Rule 32 was not filed within two years of the certificate of judgment and therefore Petitioner is precluded from raising this issue.

5. Petitioner further makes arguments of double jeopardy and cruel and unusual punishment. These issues should have been raised at trial or on appeal and therefore Petitioner is precluded from raising them now. Rule 32.2a3 and 32.2a5.

WHEREFORE PREMISES CONSIDERED, The District Attorney requests that the said Rule 32 ARCrP Petition be dismissed.

RESPECTFULLY SUBMITTED, this the 9th day of February, 2007.

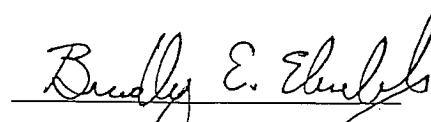
Office of the District Attorney
19th Judicial Circuit
P.O. Box 700
Wetumpka, AL 36092


Bradley E. Ekdahl (EKD 001)
Assistant District Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing documents on Petitioner, Tommy Strickland, by placing a properly addressed copy of said document in the U.S. regular mail, postage prepaid on this the 19th day of January, 2006.

Tommy Strickland
AIS # 124708
Red Eagle Honor Farm
1290 Red Eagle Road
Montgomery, Alabama 36110


Bradley E. Ekdahl (EKD 001)
Assistant District Attorney
P.O. Box 700
Wetumpka, AL 36092

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT
ELMORE COUNTY, ALABAMA

TOMMY STRICKLAND

PETITIONER,

vs.

STATE OF ALABAMA

RESPONDANT.

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CASE NO.: CC-1986-140.60

FEB 15 2007

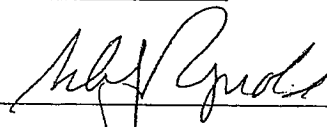
ORDER

THE COURT, having considered the Petitioner's Rule 32 ARCrP Petition and having made the following findings:

1. Petitioner's claim of ineffective assistance of counsel is time barred under Rule 32.2c.
2. Petitioner's claims of double jeopardy and cruel and unusual punishment should have been raised previously under 32.2a
3. Petitioner's claim of lack of jurisdiction focuses on a misstatement of code section §15-18-8.

Based on the foregoing, it is hereby **ORDERED, ADJUDGED**, and **DECREED** that the Petitioner's Rule 32 ARCrP is dismissed. The cost of this proceeding is hereby taxed against the Petitioner. The Commissioner of the Department of Corrections is **ORDERED** to withhold such sums from the account of Petitioner as allowed by law, and remit the same to the Circuit Clerk of Elmore County, Alabama, to be applied against the court cost herein.

DONE this the 15 day of Feb, 2007.



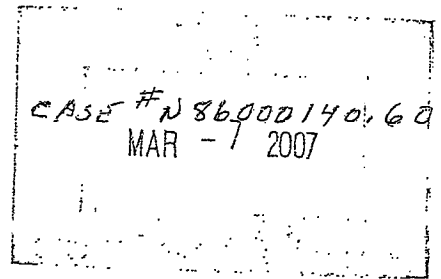
JUDGE SIBLEY REYNOLDS
PRESIDING CIRCUIT JUDGE

IN THE CIRCUIT COURT OF ELMORE COUNTY
WETUMPA, ALABAMA

TOMMY STRICKLAND

U.S.

STATE OF ALABAMA



MOTION FOR RE CONSIDERATION OF
"RULE 32" PETITION.

P. 1 OF 2

COMES NOW THE PETITIONER, TOMMY STRICKLAND (PRO-SE), IN THE ABOVE STYLED MANNER AND CAUSE AND MOVES THE HONORABLE COURT TO RE CONSIDER ~~THE~~ IT'S PREVIOUS ORDER DENYING THE PETITIONER'S "RULE 32" PETITION. (DENIED FEB 15, 2007) FOR THE FOLLOWING GOOD CAUSES:

1.) THE PETITIONER HAS MADE VAID CLAIMS THAT THE SENTENCE THAT WAS IMPOSED ON MARCH 4TH, 1986. IS ILLEGAL/IMPROPER.

2.) THE HONORABLE COURT DENIED THE PETITIONER'S RULE 32 PETITION (IN PART) DUE TO, MISTAKING TITLE 15-18-8, CODE OF ALABAMA. IN FACT, THE PETITIONER DID NOT AND DOES NOT CLAIM HE WAS SENTENCED UNDER SAID TITLE, IN FACT, HE WAS NOT. THE PETITIONER SIMPLY WAS USING TITLE 15-18-8 AS AN EXAMPLE.

3.) IT WOULD APPEAR, THE HONORABLE COURT DOES IN FACT RECOGNIZE, THE SENTENCE IN QUESTION IS IN FACT IMPROPER/ILLEGAL AND CAN OF IT'S OWN ACCORD "AMEND" OR "MOTION" TO CORRECT AN INJUSTICE. THE PETITIONER RESPECTFULLY REQUEST THIS COURSE OF ACTION.

4.) THE PETITIONER, IN PROPER MANNER, REQUESTED THAT "COUNSEL BE APPOINTED" AS WELL AS "IN FORMA PAUPIS" BE GRANTED, OF

P. 2 of 2

WHICH THE HONORABLE COURT MADE NO RULING OR REFERENCE TO EITHER LEGAL, PROPER AND LAWFUL DOCUMENT. THE PETITIONER, DOES HEREBY REQUEST A RULING BE MADE ON THESE ISSUES FOR THE PURPOSE OF FUTURE LITIGATION, SHOULD IT BECOME NECESSARY.

5.) THE PETITIONER CLAIMS THE "MAID THIRST" OF HIS "RULE 32" PETITION WAS NOT ADDRESSED AT ALL, TO WIT; THE FACT HE IS CHALLENGING AN IMPROPER / ILLEGAL SENTENCE. WHICH IS, A.) A JURISDICTIONAL ISSUE AND CAN BE RAISED AT ANYTIME, NOT TO BE "TIME-BARRED" NOR "PROCEEDURALLY BARRED". IN ADDITION THIS IS A DIRECT VIOLATION OF BOTH THE CONSTITUTION OF THE UNITED STATES AS WELL AS THE 1901 CONSTITUTION OF THE STATE OF ALABAMA.

6.) THE PETITIONER, IN AN EFFORT TO SEE JUSTICE DONE, AS IS DUE HIM, AND IN THE QUICKEST, LEAST COSTLY TO ALL PARTIES, AS THIS IS A FAIRLY SIMPLE MATTER AND THE PETITIONER'S ONLY REQUEST IS THAT THE TRIAL COURT ISSUE AN ORDER AMENDING SAID SENTENCE TO A "STRAIGHT 15 YEAR SENTENCE TO BE RAN CONCURRENT." THE PETITIONER HAS SERVED WELL IN EXCESS OF THE 15 YEARS. (DAY FOR DAY)

WHEREFORE, THE PETITIONER PRAYS THE HONORABLE COURT GRANT THIS MOTION AND IMPOSE / GRANT THE RELIEF SOUGHT

DONE THIS 5TH DAY OF MARCH, 2007

TOMMY STRICKLAND
 Tommy Strickland
 (PRO-SE)

CERTIFICATE OF SERVICE

I TOMMY STRICKLAND, UNDER PENALTY OF PERJURY, DO HEREBY
SWEAR THAT THE FOREGOING DOCUMENT "MOTION FOR RECONSIDERATION"
IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. THAT A COPY
OF SAID DOCUMENT HAS BEEN DELIVERED, VIA U.S. POSTAL SERVICE
TO THE HON. LARRY DOZIER, CLERK OF COURT, ELMORE COUNTY
ALABAMA ON THIS 5TH DAY OF MARCH 2007

TOMMY STRICKLAND
Tommy Strickland
PRO-SE

cc 1. HON LARRY DOZIER

CLERK OF COURT - ELMORE COUNTY, ALABAMA

P.O. BOX 310

WETUMPR, ALABAMA 36092-0310

IN THE CIRCUIT COURT OF ELMORE COUNTY
WETUMPKA, ALABAMA

TOMMY STRICKLAND

VS

STATE OF ALABAMA

CASE # N86000140, 60

MAR - 1 2007

NOTICE OF APPEAL

P. 1 of 2

COMES NOW THE APPELLANT, TOMMY STRICKLAND (PRO-SE) AND HEREBY GIVES NOTICE OF APPEAL IN THE ABOVE CAUSE, STYLE AND MANNER. AS A RESULT OF THE MATTER OF A "RULE 32" POST-CONVICTION RELIEF FILED IN THE ELMORE COUNTY, ALABAMA JURISDICTION ON THE 19TH DAY OF JANUARY 2007. THE APPELLANT ALLEGES THE FOLLOWING; (BUT, DOES NOT LIMIT HIMSELF TO THESE CLAIMS).

- 1.) THE TRIAL COURT FAILED TO APPOINT COUNSEL AS REQUESTED.
- 2.) THE TRIAL COURT CHARGED THE PETITIONER A FILING FEE IN SPITE OF THE FACT THE PETITIONER, DID IN FACT FILE AN "INFORMA PAPUIS STATEMENT" SHOWING HE IS IN FACT INDIGENT.
- 3.) THE TRIAL COURT FAILED TO ADDRESS THE ISSUE / FACT THAT THE APPELLANT IS IN FACT SERVING AN IMPROPER / ILLEGAL SENTENCE. EVEN THOUGH, THE APPELLANT CLEARLY MADE THIS CLAIM.
- 4.) THE TRIAL COURT DID NOT HOLD AN EVIDENTIARY HEARING TO EXPLORE THE MERITS OF THE CLAIMS SET-FORTH BY PETITIONER IN HIS RULE 32 PETITION.
- 5.) THE TRIAL COURT ERRED IN ITS RULING BY SAYING THAT THE PETITIONER "MISTATED HIS CLAIM" I.E. (PERTAINING TO TITLE 15-18-8. CODE OF ALABAMA 1975, THIS TITLE WAS USED AS AN EX SAMPLE ONLY, THE PETITIONER DOES NOT CLAIM HE WAS SENTENCED

P. 2 of 2

NOTICE OF APPEAL - CONTINUED

UNDER THIS TITLE,

6.) THE TRIAL COURT ERRORED IN THE FACT THAT, IT WOULD APPEAR THE TRIAL COURT DOES IN FACT RECOGNIZE THAT THE APPALANT IS IN FACT SERVING AN ILLEGAL / IMPROPER SENTENCE AND HAS ASKED THAT THIS ERROR BE CORRECTED. HOWEVER, THE TRIAL COURT HAS REFUSED TO TAKE ACTION TO GRANT REVIEW IN THIS MATTER.

WHEREFORE, THE APPALANT, TOMMY STRICKLAND, HEREBY GIVES WRITTEN NOTICE OF APPEAL TO ALL PARTIES CONCERNED AS IS SET-FORTH IN ALABAMA RULES OF CRIMINAL APPEALS RULES.

TOMMY STRICKLAND
Tommy Strickland
PROSE

DONE THIS 5TH DAY OF MARCH 2007

CC 1. HON. LARRY DOZIER

CLERK OF COURT, ELMORE COUNTY, ALABAMA

P.O. BOX 310

WETUMPKA, ALABAMA

CC 2

HON. LAURENCE MANN - CLERK OF COURT - COURT OF CRIMINAL APPEALS

300 DEXTER AVE

MONTGOMERY, ALABAMA 36104

CERTIFICATE OF SERVICE

I TOMMY STRICKLAND, UNDER PENALTY OF PERJURY DO HEREBY
SWEAR THAT THE INFORMATION CONTAINED IN THE FOREGOING DOCUMENTS
ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. A COPY OF
THESE DOCUMENTS HAVE BEEN PLACED IN THE U. S. POSTAL SERVICE
FOR DELIVERY TO ALL PARTIES ON THIS 5TH DAY OF MARCH 2007

ENCLOSED DOCUMENTS

1.) NOTICE OF APPEAL, CASE # N86000140,60

2.) REPORTERS TRANSCRIPT ORDER - CRIMINAL

3.) COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

CC:1 HON. LARRY DOZIER - CLERK OF COURT

ELMORE COUNTY ALABAMA

P.O. BOX 310

WETUMPR, ALABAMA 36092-0310

CC:2 HON. LAVERNE HADD - CLERK OF COURT

COURT OF CRIMINAL APPEALS

300 DEXTER AVE

MONTGOMERY, ALABAMA

36104

TOMMY STRICKLAND
Tommy Strickland
PRO-SE.

ALABAMA JUDICIAL INFORMATION CENTER

CASE ACTION SUMMARY
CONTINUATIONCASE: CC 19860 000140.C
JUDGE ID: SGR

CITY OF WETUMPKA

VS

TOMMY E. STRICKLAND

DATE

ACTION, JUDGMENTS, CASE NOTES

5/3/00 : motion for Sentence Consolidation
 5-6-00 : Court is without jurisdiction to modify any sentence (SD) c. DA + TS
 10-4-02 : Motion for Sentence Consolidation
 10-9-02 : Court is without jurisdiction to consolidate sentence (SD)
 1-29-03 : Motion Rums Pro Dure
 1-31-03 : Motion to Modify sentence - denied (SD) c. DA + J. Strickland
 2-26-03 : Motion to Take Away Consecutive Status of Sentence
 3-4-03 : Motion to Modify sentence - denied (SD) c. DA + J. Strickland
 3-12-03 : Depts Notice of Appeal & Request for Attorney
 3-12-03 : Court of Criminal Appeals Docketing Statement
 3-12-03 : Reporter's Transcript Order
 3-13-03 : Notice of Appeal to Court of Criminal Appeals c. DA, A. Shuman, AG
 3-19-03 : Court Appoints Hon Liz Hoxley to represent defendant (SD)
 3-21-03 : Certificate of Judgment

FORM 1C. REPORTER'S TRANSCRIPT ORDER—CRIMINAL

State of Alabama Unified Judicial System Form ARAP-1C 8/91	REPORTER'S TRANSCRIPT ORDER -- CRIMINAL <small>See Rules 10(c) and 11(b) of the Alabama Rules of Appellate Procedure (A.R. App.P.).</small>	Criminal Appeal Number _____
---	---	---------------------------------

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF ELMORE COUNTY
TOMMY STRICKLAND

V. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF _____

Case Number <u>N 86000140.60</u>	Date of Judgment/Sentence/Order <u>2/15/2007</u>
Date of Notice of Appeal Oral: _____ Written: <u>3/5/07</u>	Indigent Status Granted: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (<u>UNPAID</u>)

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

Tommy Strickland 3/5/07 TOMMY STRICKLAND
Signature Date Print or Type Name

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R. App.P.)):

MARK PROCEEDINGS REQUESTED:

A. ☐ TRIAL PROCEEDINGS - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.

B. ☐ ORGANIZATION OF THE JURY - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

C. ☐ ARGUMENTS OF COUNSEL - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

COURT REPORTER(S)

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED	DATE	COURT REPORTER(S)
D. _____	_____	_____
E. _____	_____	_____
F. _____	_____	_____
G. _____	_____	_____

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R. App.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Signature Date Print or Type Name

DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney, (3) the Attorney General or the municipal prosecutor, in lieu of the District Attorney and the Attorney General if the appeal is from a municipal conviction, and (4) to each Court Reporter who reported proceedings designated for inclusion in the reporter's transcript.

[Adopted effective October 1, 1991.]

A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF ELMORE COUNTY

TOMMY STRICKLAND

7-7-2008 Appellant

v. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF

Case Number <u>N86000140-60</u>	Date of Complaint or Indictment <u>1/19/2007</u>	Date of Judgment/Sentence/Order <u>2/15/07</u>
Number of Days of Trial/Hearing <u>0</u> Days	Date of Notice of Appeal Oral: _____ Written: <u>3/5/07</u>	
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Indigent Status Granted: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	(NOT RULED ON)

B. REPRESENTATION:

Is Attorney Appointed or Retained? <input type="checkbox"/> Appointed <input checked="" type="checkbox"/> Retained	If no attorney, will appellant represent self? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <u>PRO SE</u>	Telephone Number <u>N/A</u>
Address <u>1290 RED EAGLE ROAD</u>	City <u>MONT GOMERY</u>
State <u>ALABAMA</u>	Zip Code <u>36110</u>

C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant <u>N/A</u>	Case Number <u>N/A</u>
Codefendant <u>N/A</u>	Case Number <u>N/A</u>
Codefendant <u>N/A</u>	Case Number <u>N/A</u>

D. TYPE OF APPEAL: Please check the applicable block.

1 <input type="checkbox"/> State Conviction	4 <input type="checkbox"/> Pretrial Order	7 <input type="checkbox"/> Juvenile Transfer Order	10 <input type="checkbox"/> Other (Specify)
2 <input checked="" type="checkbox"/> Post-Conviction Remedy	5 <input type="checkbox"/> Contempt Adjudication	8 <input type="checkbox"/> Juvenile Delinquency	
3 <input type="checkbox"/> Probation Revocation	6 <input type="checkbox"/> Municipal Conviction	9 <input type="checkbox"/> Habeas Corpus Petition	

E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

1 <input type="checkbox"/> Capital Offense - §	6 <input type="checkbox"/> Trafficking in Drugs - §	11 <input type="checkbox"/> Fraudulent Practices - §
2 <input type="checkbox"/> Homicide - §	7 <input type="checkbox"/> Theft - §	12 <input type="checkbox"/> Offense Against Family - §
3 <input type="checkbox"/> Assault - §	8 <input type="checkbox"/> Damage or Intrusion to Property - §	13 <input type="checkbox"/> Traffic - DUI - §
4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - §	9 <input type="checkbox"/> Escape - §	14 <input type="checkbox"/> Traffic - Other - §
5 <input checked="" type="checkbox"/> Drug Possession - §	10 <input type="checkbox"/> Weapons/Firearms - §	15 <input type="checkbox"/> Miscellaneous (Specify) - §

F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

G. TRANSCRIPT:

1. Will the record on appeal have a reporter's transcript? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	3/5/07 (Date)
2. If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed:	
3. If the answer to question "1" is "No," (a) Will a stipulation of facts be filed with the circuit clerk? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (b) Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

POST JUDGMENT MOTIONS: List all post judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCP)).

DATE OF FILING			TYPE OF POST JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
05	03	00	MOTION FOR SENTENCE CONSOLIDATION	05	06	00
10	07	02	MOTION FOR SENTENCE CONSOLIDATION	10	09	02
01	29	03	MOTION TO MODIFY SENTENCE	01	31	03
02	26	03	MOTION TO MODIFY SENTENCE	03	02	03

ADDITIONAL INFO SEE ATTACHMENT (EXHIBIT A)

NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

ON MARCH 27TH 1986, THE APPLICANT PLEAD GUILTY TO A CHARGE OF MURDER IN THE FIRST DEGREE (TO WIT: MANSLAUGHTER) AND RECEIVED A US\$ FORTY THOUSAND DOLLAR FINE AND A TERM OF 10 YEARS IN THE ALABAMA STATE PRISON. THIS SENTENCE IS IMPROPER / ILLEGAL IN THE FACT IT IS IN PART CONCURRENT AND IN PART CONCURRENT OF WHICH THERE ARE NO PROVISIONS IN UNDER ALABAMA LAW FOR SUCH A SENTENCE. THE APPLICANT HAS ATTEMPTED NUMEROUS TIMES TO PETITION THE TRIAL COURT (SPE, PREVIOUS MOTIONS) TO CORRECT THIS ERROR. TO NO AVAIL. ON JANUARY 19TH 2009 THE APPLICANT FILED A "RULE 32 PETITION" IN THIS MATTER. ON FEB 15TH THE TRIAL COURT DENIED THE PETITION. (WITHOUT A REASONING HEARING) THIS APPEAL FOLLOWS. IT MUST BE NOTED THE PETITIONER IS EXHAUSTED AND THE RECORD AT AND EAGLE HALLER EAGLE (LEGAL LOG) WILL REFLECT THE APPLICANT WAS NOT ADVISED OF THE APPEAL UNTILL 2/22/07. A FULL WEEK AFTER JUDGMENT.

ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

- 1.) TRIAL COURT FAILED TO APPOINT COUNSEL ON RULE 32
- 2.) TRIAL COURT DID NOT GRANT "EX FORMA PAPER" AS REQUESTED
- 3.) CLEARLY THE SENTENCE IMPOSED AND CHALLENGED IS ILLEGAL / IMPROPER AND CAN BE RAISED AT ANY TIME. THE TRIAL COURT DID NOT ADDRESS THIS ISSUE. IT IS THE "MATERIAL FACTS" OF THE PETITION.
- 4.) THE TRIAL COURT CLAIMS, "THE PETITIONER MISTAKED HIS CLAIMS" THE FACT REMAINS THE TRIAL COURT IS TO APPEAL THIS SENTENCE IS ILLEGAL / IMPROPER AND IS "BOUND BY LAW" TO CORRECT THIS SENTENCE EITHER BY ITS OWN MOTION OR THE MOTION OF THE PETITIONER.

K. SIGNATURE

colle

3-5-07

Date

Signature of Attorney/Party Filing this Form

Signature of Attorney/Party Filing this Form

ACR371

ALABAMA JUDICIAL DATA CENTER.

NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS

BY THE TRIAL COURT CLERK

IN THE CIRCUIT COURT OF ELMORE COUNTY

STATE OF ALABAMA VS STRICKLAND TOMMY

JUDGE: SIBLEY G. REYNOLDS

APPEAL DATE: 03/07/2007

INDIGENCY STATUS:

GRANTED INDIGENCY STATUS AT TRIAL COURT:

APP. TRIAL COUNSEL PERMITTED TO W/D ON APPEAL:

INDIGENT STATUS REVOKED ON APPEAL:

INDIGENT STATUS GRANTED ON APPEAL:

<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO

DEATH PENALTY: NO

APPEAL TYPE: RULE 32 PETITION

THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC) OR FROM ANY OTHER ISSUED BY THE TRIAL JUDGE.

CO/CASE NUMBER: 29/CC 1986 000140.60

ORDER ENTERED (DATE): 02152007 PETITION: X DISMISSED ☐ DENIED ☐ GRANTED ☐

POST-JUDGMENT MOTIONS FILED: DT FILED DT DENIED CON BY AGREE

MOTION FOR NEW TRIAL

MOTION FOR JUDGE OF ACQUIT

MOTION TO W/D GUILTY PLEA

MOTION FOR ATTY TO W/DRAW

OTHER

COURT REPORTER(S):

ADDRESS:

SHARMAN, DEBORAH M.
C/O HON. SIBLEY REYNOLDS
CLANTON, AL 35045

APPELLATE COUNSEL #1:

ADDRESS:

PHONE NUMBER:

EMAIL ADDRESS:

APPELLATE COUNSEL #2:

ADDRESS:

PHONE NUMBER:

EMAIL ADDRESS:

APPELLANT (PRO SE):

ADDRESS:

AIS #:

STRICKLAND TOMMY

AIS # 124708

MT MEIGS

124708, AL 360570000

APPELLEE (IF CITY APPEAL):

ADDRESS:

I CERTIFY THAT THE INFORMATION PROVIDED
ABOVE IS ACCURATE TO THE BEST OF MY
KNOWLEDGE AND I HAVE SERVED A COPY OF
THIS NOTICE OF APPEAL ON ALL PARTIES TO
THIS ACTION ON THIS 14 DAY OF MARCH, 2007

OPERATOR: SUS
PREPARED: 03/14/2007

CIRCUIT COURT CLERK

ACR371

ALABAMA JUDICIAL DATA CENTER
 NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS
 BY THE TRIAL COURT CLERK
 IN THE CIRCUIT COURT OF ELMORE COUNTY
 STATE OF ALABAMA VS STRICKLAND TOMMY JUDGE: SIBLEY G. REYNOLDS

APPEAL DATE: 03/07/2007

INDIGENCY STATUS:

GRANTED INDIGENCY STATUS AT TRIAL COURT:	<u>X</u>	YES	<u> </u>	NO
APP. TRIAL COUNSEL PERMITTED TO W/D ON APPEAL:	<u>X</u>	YES	<u> </u>	NO
INDIGENT STATUS REVOKED ON APPEAL:	<u> </u>	YES	<u>X</u>	NO
INDIGENT STATUS GRANTED ON APPEAL:	<u>X</u>	YES	<u> </u>	NO

DEATH PENALTY: NO

APPEAL TYPE: RULE 32 PETITION

THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC) OR FROM ANY OTHER ISSUED BY THE TRIAL JUDGE.

CO/CASE NUMBER: 29/CC 1986 000140.60

ORDER ENTERED (DATE): 02152007 PETITION: X DISMISSED DENIED GRANTED

POST-JUDGMENT MOTIONS FILED:	DT FILED	DT DENIED	CON BY AGREE
<u> </u> MOTION FOR NEW TRIAL	<u> </u>	<u> </u>	<u> </u>
<u> </u> MOTION FOR JUDG. OF ACQUITT	<u> </u>	<u> </u>	<u> </u>
<u> </u> MOTION TO W/D GUILTY PLEA	<u> </u>	<u> </u>	<u> </u>
<u> </u> MOTION FOR ATTY TO W/DRAW	<u> </u>	<u> </u>	<u> </u>
<u> </u> OTHER	<u> </u>	<u> </u>	<u> </u>

COURT REPORTER(S):
ADDRESS:

SHARMAN, DEBORAH M.
 C/O HON. SIBLEY REYNOLDS
 CLANTON, AL 35045

APPELLATE COUNSEL #1:
ADDRESS:PHONE NUMBER:
EMAIL ADDRESS:APPELLATE COUNSEL #2:
ADDRESS:PHONE NUMBER:
EMAIL ADDRESS:APPELLANT (PRO SE):
ADDRESS:

STRICKLAND TOMMY
 AIS # 124708
 MT MEIGS, AL 360570000
 124708

AIS #:

APPELLEE (IF CITY APPEAL):
ADDRESS:

I CERTIFY THAT THE INFORMATION PROVIDED
 ABOVE IS ACCURATE TO THE BEST OF MY
 KNOWLEDGE AND I HAVE SERVED A COPY OF
 THIS NOTICE OF APPEAL ON ALL PARTIES TO
 THIS ACTION ON THIS 16 DAY OF March, 2007

OPERATOR: SUS
 PREPARED: 03/16/2007

[Signature]
 CIRCUIT COURT CLERK

Amended

ACR371

ALABAMA JUDICIAL DATA CENTER
NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS
BY THE TRIAL COURT CLERK

IN THE CIRCUIT COURT OF ELMORE COUNTY
STATE OF ALABAMA VS STRICKLAND TOMMY JUDGE: SIBLEY G. REYNOLDS

APPEAL DATE: 03/07/2007

INDIGENCY STATUS:

GRANTED INDIGENCY STATUS AT TRIAL COURT:	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
APP. TRIAL COUNSEL PERMITTED TO W/D ON APPEAL:	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO
INDIGENT STATUS REVOKED ON APPEAL:	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
INDIGENT STATUS GRANTED ON APPEAL:	<input checked="" type="checkbox"/>	YES	<input type="checkbox"/>	NO

DEATH PENALTY: NO

APPEAL TYPE: RULE 32 PETITION

THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC) OR FROM ANY OTHER ISSUED BY THE TRIAL JUDGE.

CO/CASE NUMBER: 29/CC 1986 000140.60

ORDER ENTERED (DATE): 02152007 PETITION: X DISMISSED ☐ DENIED ☐ GRANTED ☐

POST-JUDGMENT MOTIONS/FILED:	DT FILED	DT DENIED	CON BY AGREE
MOTION FOR NEW TRIAL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MOTION FOR JUDGE OF ACQUITT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MOTION TO W/D GUILTY PLEA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MOTION FOR ATTY TO W/DRAW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OTHER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

COURT REPORTER(S):
ADDRESS:

APPELLATE COUNSEL #1:
ADDRESS:

PHONE NUMBER:
EMAIL ADDRESS:

APPELLATE COUNSEL #2:
ADDRESS:

PHONE NUMBER:
EMAIL ADDRESS:

APPELLANT (PRO SE):
ADDRESS:

AIS #:

APPELLEE (IF CITY APPEAL):
ADDRESS:

STRICKLAND TOMMY
AIS # 124708
MT MEIGS , AL 360570000
124708

I CERTIFY THAT THE INFORMATION PROVIDED
ABOVE IS ACCURATE TO THE BEST OF MY
KNOWLEDGE AND I HAVE SERVED A COPY OF
THIS NOTICE OF APPEAL ON ALL PARTIES TO
THIS ACTION ON THIS 30 DAY OF March, 2007

OPERATOR: SUS
PREPARED: 03/30/2007

Sandy Dozier
CIRCUIT COURT CLERK

State of Alabama Unified Judicial System Form ARAP-14 11/91	CERTIFICATE OF COMPLETION AND TRANSMITTAL OF RECORD ON APPEAL BY TRIAL CLERK	Appellate Case Number _____
---	--	--------------------------------

TO: THE CLERK OF
THE COURT OF CRIMINAL APPEALS OF ALABAMA

DATE OF
NOTICE OF APPEAL: MARCH 7, 2007

APPELLANT

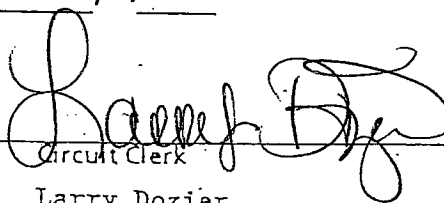
TOMMY STRICKLAND

V. STATE OF ALABAMA

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of 34 pages) (_____ volumes of 200 pages each and one volume of _____ pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

Dated this 2 day of APRIL, 2007.


Circuit Clerk

Larry Dozier

ELMORE COUNTY

rel: 09/21/2007

Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala.R.App.P. Rule 54(d), states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

Court of Criminal Appeals

State of Alabama

Judicial Building, 300 Dexter Avenue

P. O. Box 301555

Montgomery, AL 36130-1555

PAMELA W. BASCHAB
Presiding Judge
H.W."BUCKY" McMILLAN
GREG SHAW
A. KELLI WISE
SAMUEL HENRY WELCH
Judges

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk
(334) 229-0751
Fax (334) 229-0521

MEMORANDUM

CR-06-0990

Elmore Circuit Court CC-86-140.60

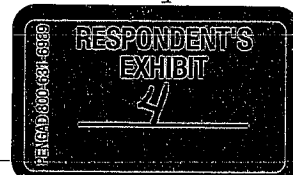
Tommy Strickland v. State of Alabama

Baschab, Presiding Judge.

The appellant alleges that, on March 4, 1986, he pled guilty to second-degree promoting prison contraband. He also alleges that the trial court sentenced him, as a habitual offender, to serve a term of fifteen years in prison. See §13A-5-9, Ala. Code 1975. He did not appeal his conviction. On January 22, 2007, the appellant filed a Rule 32 petition, challenging his conviction. After the State responded, the circuit court summarily dismissed the petition. This appeal followed.

I.

The appellant argues that the circuit court erroneously



dismissed his petition without first conducting an evidentiary hearing. In his petition, he argued that his sentence exceeds the maximum authorized by law or is otherwise not authorized by law because:

1) the trial court improperly ordered that he serve ten years of his sentence concurrently with an existing sentence and that he serve five years of his sentence consecutively to an existing sentence;

2) the trial court improperly sentenced him as a habitual offender because the State did not prove any prior felony convictions; and

3) his sentence constitutes cruel and unusual punishment because it "has been manipulated to span of over the course of (25) twenty-five to (30) years" because the trial court ordered him to serve it concurrently in part and consecutively in part. (C.R. 17.)¹

With regard to Claim 1, this court previously rejected such a claim in Wooten v. State, 466 So. 2d 161 (Ala. Crim. App. 1985). Therefore, the appellant is not entitled to relief as to that claim.

Claims 2 and 3 are nonjurisdictional claims that are precluded because the appellant could have raised them at trial and on appeal, but did not, and because they are time-barred. See Rules 32.2(a)(3), (a)(5), and (c), Ala. R. Crim. P.

Because the appellant's claims were without merit and precluded, the circuit court properly dismissed his petition without first conducting an evidentiary hearing. See Rule 32.7(d), Ala. R. Crim. P.

II.

¹The appellant also raised additional claims in his petition, but he does not pursue them on appeal. Therefore, we deem those claims abandoned. See Brownlee v. State, 666 So. 2d 91 (Ala. Crim. App. 1995).

The appellant also argues that the circuit court erroneously taxed the costs of the proceedings against him after it dismissed his petition. However, he did not present this argument to the circuit court. Therefore, it is not properly before this court. See Whitehead v. State, 593 So. 2d 126 (Ala. Crim. App. 1991).

For the above-stated reasons, we affirm the circuit court's judgment.

AFFIRMED.

McMillan, Shaw, Wise, and Welch, JJ., concur.

**COURT OF CRIMINAL APPEALS
STATE OF ALABAMA**

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk



P. O. Box 301555
Montgomery, AL 36130-1555
(334) 229-0751
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October 12, 2007

CR-06-0990

Tommy Strickland v. State of Alabama (Appeal from Elmore Circuit Court: CC86-140.60)

NOTICE

You are hereby notified that on October 12, 2007 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

**Lane W. Mann, Clerk
Court of Criminal Appeals**

cc: Hon. Larry Dozier, Circuit Clerk
Tommy Strickland, Pro Se
Hon. Madeline Hinson Lewis, Asst. Attorney General



IN THE SUPREME COURT OF ALABAMA



November 9, 2007

1070107

Ex parte Tommy Strickland. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Tommy Strickland v. State of Alabama) (Elmore Circuit Court: CC86-140.60; Criminal Appeals : CR-06-0990).

CERTIFICATE OF JUDGMENT

Writ Denied

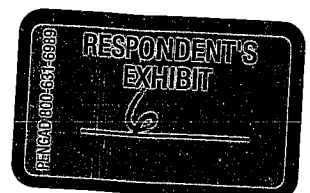
The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

STUART, J. - See, Lyons, Bolin, and Murdock, JJ., concur. Cobb, C.J., recuses herself.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 9th **day of** November, 2007

Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama



THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT
THE ALABAMA COURT OF CRIMINAL APPEALS

CR-06-0990

Tommy Strickland v. State of Alabama (Appeal from Elmore Circuit Court:
CC86-140.60)

CERTIFICATE OF JUDGMENT

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Court of Criminal Appeals; and

WHEREAS, the judgment indicated below was entered in this cause on September 21st 2007:

Affirmed by Memorandum.

NOW, THEREFORE, pursuant to Rule 41 of the Alabama Rules of Appellate Procedure, it is hereby certified that the aforesaid judgment is final.

**Witness. Lane W. Mann, Clerk
Court of Criminal Appeals, on this
the 14th day of November, 2007.**

Lucy M. Mann

**Clerk
Court of Criminal Appeals
State of Alabama**

cc: Hon. Sibley G. Reynolds, Circuit Judge
Hon. Larry Dozier, Circuit Clerk
Tommy Strickland, Pro Se
Hon. Madeline H. Lewis, Asst. Attorney General

